

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:)	
)	
CRAIG A. IRA,)	Case No. 02-13982
)	Chapter 7
Debtor.)	
_____)	

**MEMORANDUM AND ORDER DENYING MOTION FOR EXTENSION OF
TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY
OF CERTAIN DEBTS**

This matter is before the court on a Motion to Extend Period to File Complaint Challenging Discharge (Doc. 4), filed by Catherine E. Ira. The movant is seeking a thirty (30) day extension of the deadline from November 18, 2002 to December 18, 2002. For the reasons set forth below the motion is denied in part, with the remainder of the motion being denied as moot.

I. FINDINGS OF FACT

The movant is seeking to extend the deadline to file a complaint to determine dischargeability of certain debts arising out of her divorce from the debtor. According to the motion, the movant intends to file a complaint challenging the discharge of child support obligations ordered by the court during the divorce, as well as certain debt concerning the movant and debtor's prior residence, which was also subject to the divorce court's order.

Pursuant to the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines ("Notice"), the initial meeting of creditors in this case was first set to be held September 17, 2002. The Notice also indicated that the deadline for filing a Complaint Objecting to Discharge was November 18,

2002, and that the complaint must be received by the bankruptcy clerk's office by that date. According to the Certificate of Service attached to the Notice, the movant was served with a copy of the Notice. The current motion was filed with the court on November 19, 2002.

II. CONCLUSIONS OF LAW

The deadline for filing a motion to determine the dischargeability of a debt is governed by Federal Rules of Bankruptcy Procedure Rule 4007. Pursuant to Rule 4007(b), a complaint other than one under 11 U.S.C. §523(c) may be filed at any time. However, Rule 4007(c) requires “[a] complaint to determine the dischargeability of a debt under §523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a).” Rule 4007(c) allows the court to extend the time limit for filing a complaint, but requires that “[t]he motion shall be filed before the time has expired.”

The Tenth Circuit Court of Appeals has held that the time limits of Rule 4007(c) must be strictly enforced. *H.T. Paul Co. v. Atteberry (In re Atteberry)*, 194 B.R. 521, 523 (D. Kan. 1996) (citing *In re Themy*, 6 F.3d 688, 689 (10th Cir. 1993)). There are two recognized exceptions in the Tenth Circuit to the rule of strict enforcement of the time limits in Rule 4007(c). First, if the bankruptcy court affirmatively misleads a litigant by issuing an order establishing an incorrect deadline for filing objections to discharge and complaints objecting to dischargeability, creditors will not be prejudiced by the court's misleading information. *Id.* Second, the Tenth Circuit has held that creditors should be allowed to file untimely objections or complaints if the creditor has not received adequate notice of the proceedings. *Id.* at 524.

III. ANALYSIS

The movant filed her motion to extend the deadline for filing a complaint challenging the dischargeability of debt after the deadline set by the Notice, which was 60 days after the date first set for

the meeting of creditors as required by Rule 4007(c). However, Rule 4007(c) only sets a deadline for filing complaints under §523(c). Because the movant is seeking to challenge two different types of debt, the court must analyze each to determine if a complaint challenging the dischargeability of each type of debt is governed by §523(c) and, therefore, subject to the timing requirements of Rule 4007(b).

Pursuant to §523(c), a debtor shall be discharged from a debt of a kind specified in 11 U.S.C. §523(a)(2), (4), (6), or (15) unless, following a request by the creditor to whom the debt is owed, the court determines that the debt should not be discharged under 11 U.S.C. §523(a)(2), (4), (6), or (15). Section 523(a)(2), (4), and (6) appear to have no relevance to the motion currently before the court. Section 523(a)(15) excludes from discharge debt that is incurred by the debtor in the course of a divorce or separation, unless the debt falls within the confines of §523(a)(5). Section 523(a)(5) applies to debt to a spouse, former spouse or child of the debtor for alimony to, maintenance for, or support of such spouse or child.

According to Paragraph 3 of the motion currently before the court, the debtor is required to pay \$951.00 per month in child support pursuant to the court approved Property Settlement agreement arising from the divorce. This debt is currently in arrears and the movant contends that such debt should not be discharged. Because this is the type of debt addressed in §523(a)(5), it is not subject to the provisions of §523(c). Therefore, pursuant to Rule 4007(b), a complaint challenging the dischargeability of this debt can be filed at any time and is not subject to the November 18, 2002 deadline contained in the Notice sent to the movant. Consequently, the motion to extend the deadline will be denied as moot to the extent it relates to the debt described in Paragraph 3 of the motion, as the deadline is not applicable to that debt.

According to Paragraph 4 of the motion currently before the court, the movant contends that the debtor may have some obligations concerning the debtor's and movant's prior residence. These obligations also arise out of the Property Settlement agreement. Because the debt does not involve alimony or support to the former spouse or the children, the debt falls within the confines of §523(a)(15). Therefore, Rule 4007(c) required that the complaint be filed by October 18, 2002, or that a motion to extend the deadline for filing the complaint be filed before the expiration of the time for filing the complaint. Neither of the exceptions to the timing requirements of Rule 4007(c) are applicable in this case, as the court order setting the deadline for objections was correct and the creditor received notice of the pendency of this action. Because the movant failed to seek an extension of the deadline for filing complaints in a timely manner, the court must deny the motion as it relates to the debt described in Paragraph 4 of the motion.

IV. CONCLUSION

The motion for extension of time must be denied as untimely in part, with the remaining portion being denied as moot. To the extent the motion relates to child support payments, a complaint objecting to the dischargeability of that debt can be filed at any time and the creditor is not bound by the time limits set forth in Rule 4007(c). However, the debt obligations described in Paragraph 4 of the motion fall within the confines of 11 U.S.C. §523(c). Therefore, the movant was required to file the current motion prior to the expiration of the deadline to file complaints contesting the dischargeability of debts. Because this motion was not timely filed, it must be denied.

IT IS, THEREFORE, BY THIS COURT ORDERED that the Motion to Extend Period to File Complaint Challenging Discharge (Doc. 4), filed by Catherine E. Ira, is hereby denied in part and denied as moot in part. The motion is denied as it relates to an extension of time to file a complaint

challenging discharge of the debt obligations outlined in Paragraph 4 of the motion. The motion is denied as moot as it relates to the debt obligations outlined in Paragraph 3 of the motion, as a complaint challenging discharge of that debt can be filed at any time.

IT IS SO ORDERED this _____ day of December, 2002.

Janice Miller Karlin
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

The undersigned certifies that copies of **MEMORANDUM AND ORDER DENYING MOTION FOR EXTENSION OF TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS** was deposited in the United States mail, postage prepaid on this _____ day of December, 2002, to the following:

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